

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

JERMERRAL LAMAR BOWIE,
Plaintiff,

v.

Case No. 06C0897

DAVID CLARKE, DEPUTY KICKBUSH,
and SGT. HALE,
Defendants,

ORDER

Plaintiff Jermerral Lamar Bowie, who is proceeding pro se, lodged a civil rights complaint under 42 U.S.C. § 1983, alleging that his civil rights were violated. This matter comes before the court on plaintiff's petition to proceed in forma pauperis.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. § 1915(b)(1). If a prisoner does not have the money to pay the filing fee, he can request leave to proceed in forma pauperis. To proceed with an action in forma pauperis, the prisoner must complete a petition and affidavit to proceed in forma pauperis and return it to the court with a certified copy of the prisoner's trust account statement showing transactions for the prior six months. The court then assesses and, when funds exist, collects from the plaintiff at the time the action is filed an initial partial filing fee of 20% of the average monthly deposits to or the average monthly balance in the prisoner's trust account for the six-month period immediately preceding the filing of the complaint.

In this case, the plaintiff has filed a certified copy of his prison trust account statement for the two-month period immediately preceding the filing of his complaint. The prisoner has been assessed and paid an initial partial filing fee of \$15.85.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992); Neitzke v. Williams, 490 U.S. 319, 325 (1989); Hutchinson ex rel. Baker v. Spink, 126 F.3d 895, 900 (7th Cir. 1997). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327. "Malicious," although sometimes treated as a synonym for "frivolous," "is more usefully construed as intended to harass." Lindell v. McCallum, 352 F.3d 1107, 1109-10 (7th Cir. 2003) (citations omitted).

A complaint, or portion thereof, should be dismissed for failure to state a claim upon which relief may be granted if it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim or claims that would entitle him to relief. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). In reviewing a complaint under this standard, the court must accept as true the allegations of the complaint in question, Hosp. Bldg. Co. v. Trs. of Rex Hosp., 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

To state a claim for relief under 42 U.S.C. § 1983, plaintiffs must allege: 1) that they were deprived of a right secured by the Constitution or laws of the United States, and 2) that the deprivation was visited upon them by a person acting under color of state law. Gomez v. Toledo, 446 U.S. 635, 640 (1980). The court is obliged to give the plaintiff's pro se allegations, however inartfully pleaded, a liberal construction. See Haines v. Kerner, 404 U.S. 519, 520-21 (1972).

Federal Rule of Civil Procedure 8(a)(2) provides that a complaint must include only “a short and plain statement of the claim showing that the pleader is entitled to relief.” This statement must simply “give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512 (2002) (quoting Conley, 355 U.S. at 47); see also Thomson v. Washington, 362 F.3d 969, 970-71 (7th Cir. 2004) (no heightened pleading requirement for pro se prisoner civil rights complaint). Of course, if a complaint pleads facts that show that a plaintiff does not have a claim, the complaint should be dismissed “without further ado.” Thomson, 362 F.3d at 970.

Plaintiff resided at the Milwaukee County Jail (“Jail”) at all times relevant. The defendants are Milwaukee County Sheriff David Clarke, Deputy Kickbush, and Sgt. Hale, all of whom are sued in their individual capacities.

Plaintiff alleges that defendants are denying him meaningful access to the courts. He states that there is no law library at the Jail and that he is unable to conduct legal research. In addition, plaintiff states that he is currently proceeding pro se in a pending case. For relief, he seeks \$250,000 in damages and \$500,000 in legal fees.

The court finds that the complaint states an access to the courts claim. See Bounds v. Smith, 430 U.S. 817 (1977); Pratt v. Tarr, ___ F.3d ___, 2006 WL 2739357 (7th Cir. Sept. 27, 2006); Marshall v. Knight, 445 F.3d 965, 968 (7th Cir. 2006).

Finally, although plaintiff was released from the Jail on September 12, 2006, he is still liable for the remainder of the filing fee for this action. See Robbins v. Switzer, 104 F.3d 895, 897 (7th Cir. 1997). Plaintiff should pay the remainder of the fee to the Clerk of Court as soon as possible.

Therefore,

IT IS ORDERED that the plaintiff's request to proceed in forma pauperis (Docket #2) be and hereby is **GRANTED**.

IT IS FURTHER ORDERED that the United States Marshal shall serve a copy of the complaint, the summons, and this order upon the defendants pursuant to Federal Rule of Civil Procedure 4.

IT IS ALSO ORDERED that the defendants shall file a responsive pleading to the complaint.

IT IS FURTHER ORDERED that plaintiff shall pay the remainder of the filing fee (\$334.15) to the Clerk of Court. The payments shall be clearly identified by the case name and number assigned to this action.

Plaintiff is hereby notified that he is required to send a copy of every paper or document filed with the court to the opposing parties or their attorney(s). Fed. R. Civ. P. 5(a). Plaintiff should also retain a personal copy of each document. If plaintiff does not have access to a photocopy machine, plaintiff may send out identical handwritten or typed

copies of any documents. The court may disregard any papers or documents which do not indicate that a copy has been sent to each defendant or to their attorney(s).

Plaintiff is further advised that failure to make a timely submission may result in the dismissal of this action for failure to prosecute.

In addition, the parties must notify the Clerk's Office of any change of address. Failure to do so could result in orders or other information not being timely delivered, thus affecting the legal rights of the parties.

Dated at Milwaukee, Wisconsin, this 19 day of October, 2006.

/s _____
LYNN ADELMAN
District Judge